

## **EXPLANATORY NOTES**

### **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

#### **INTRODUCTION**

#### **THE ACT – AN OVERVIEW**

##### **PART 1 – ACCESS TO INFORMATION HELD BY SCOTTISH PUBLIC AUTHORITIES**

##### **PART 2 – EXEMPT INFORMATION**

##### **PART 3 – THE SCOTTISH INFORMATION COMMISSIONER**

##### **PART 4 – ENFORCEMENT**

##### **PART 5 – HISTORICAL RECORDS**

##### **PART 6 – CODES OF PRACTICE**

##### **PART 7 – MISCELLANEOUS AND SUPPLEMENTAL**

#### **THE ACT – SECTION BY SECTION**

##### **PART 1 – ACCESS TO INFORMATION HELD BY SCOTTISH PUBLIC AUTHORITIES**

Section 1 – General entitlement

Section 2 – Effect of exemptions

Section 3 – Scottish public authorities

Section 4 – Amendment of schedule 1

Section 5 – Further power to designate Scottish public authorities

Section 6 – Publicly-owned companies

Section 7 – Public authorities to which Act has limited application

Section 8 – Requesting information

Section 9 – Fees

Section 10 – Time for compliance

Section 11 – Means of providing information

Section 12 – Excessive cost of compliance

Section 13 – Fees for disclosure in certain circumstances

Section 14 – Vexatious or repeated requests

Section 15 – Duty to provide advice and assistance

Section 16 – Refusal of request

Section 17 – Notice that information is not held

Section 18 – Further provision as respects responses to request

Section 19 – Content of certain notices

Section 20 – Requirement for review of refusal

Section 21 – Review by Scottish public authority

Section 22 – Special provisions relating to records transferred to the Keeper

Section 23 – Publication schemes

Section 24 – Model publication schemes

## **PART 2 – EXEMPT INFORMATION**

Section 25 – Information otherwise accessible

Section 26 – Prohibitions on disclosure

Section 27 – Information intended for future publication

Section 28 – Relations within the United Kingdom

Section 29 – Formulation of Scottish Administration policy

Section 30 – Prejudice to effective conduct of public affairs

Section 31 – National security and defence

Section 32 – International relations

Section 33 – Commercial interests and the economy

Section 34 – Investigations by Scottish public authorities and proceedings arising out of such investigations

Section 35 – Law enforcement

Section 36 – Confidentiality

Section 37 – Court records,

Section 38 – Personal information

Section 39 – Health, safety and the environment

Section 40 – Audit functions

Section 41 – Communications with Her Majesty, and honours

### **PART 3 – THE SCOTTISH INFORMATION COMMISSIONER**

Section 42 – The Scottish Information Commissioner

Section 43 – General functions of Commissioner

Section 44 – Recommendations as to good practice

Section 45 – Confidentiality of information obtained by or furnished to Commissioner

Section 46 – Laying of reports

### **PART 4 – ENFORCEMENT**

Section 47 – Application for decision by Commissioner

Section 48 – When application excluded

Section 49 – Commissioner’s decision

Section 50 – Information notices

Section 51 – Enforcement notices

Section 52 – Exception from duty to comply with certain notices

Section 53 – Failure to comply with notice

Section 54 – Powers of entry and inspection

Section 55 – No civil right of action against Scottish public authority

Section 56 – Appeal against notices under Part 4

### **PART 5 – HISTORICAL RECORDS**

Section 57 – The expression “historical record”

Section 58 – Falling away of exemptions with time

Section 59 – Power to vary periods in sections 57 and 58

### **PART 6 – CODES OF PRACTICE**

Section 60 – Code of practice as to functions under this Act

Section 61 – Code of practice as to the keeping, management and destruction of records

### **PART 7 – MISCELLANEOUS AND SUPPLEMENTAL**

Section 62 – Power to make provision relating to environmental information

*These notes relate to the Freedom of Information (Scotland) Act 2002 (asp 13)*

Section 63 – Disclosure of information to Scottish Public Services Ombudsman or to the UK Information Commissioner

Section 64 – Power to amend or repeal enactments prohibiting disclosure of information

Section 65 – Offence of altering records with intent to prevent disclosure

Section 67 – Protection for actions for defamation

Section 68 – Scottish Parliament and Scottish Administration

Section 69 – Exercise of rights by children

Section 70 – Amendment of Public Records (Scotland) Act 1937

Section 71 – Amendment of Scottish Public Services Ombudsman Act 2002

Section 72 – Orders and regulations

Section 74 – Giving of notice

Section 75 – Commencement

#### **Schedules**

Schedule 1 – Scottish Public Authorities (introduced by section 3(1)(a)(i))

Schedule 2 – The Scottish Information Commissioner (introduced by section 42(12))

Schedule 3 – Powers of Entry and Inspection ()

Schedule 4 – Consequential amendments to Scottish Public Services Ombudsman Act 2002 (introduced by section 71(2))

#### **PARLIAMENTARY HISTORY OF FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**